HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5329 OF 2018

1. Mr. Anant s/o Narayan Dhok
Aged 28 Years, Occu-Student

2. Miss. Tejaswini d/o Narayan Dhok
Aged about 21 Years, Occu-Education

Both are Residents of Plot No.46, Pawan Nagar, New Town, Badnera, Tahsil & District Amravati. … **PETITIONERS**

V E R S U S

1. The Scheduled Tribe Caste Certificate Scrutiny Committee, Gadchiroli
through its Deputy Director and Member Secretary, Complex Area near Zilla Parishad School, Gadchiroli, District Gadchiroli.

2. Vishwakarma Institute of Technology run by Bansilal Ramnath Agarwal Charitable Trust, at 666, Upper Indira Nagar, Bibvewadi, Pune, through its Director

3. Sub Divisional Officer, Chimur
District Chandrapur. … **RESPONDENTS**

Mr. Ananta Ramteke, Advocate for Petitioners.
Mr. S. M. Ghodeswar, AGP for Respondent Nos.1 & 3.
Mr. D. U. Thakare, Advocate for Respondent No.2.

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CORAM : SUNIL B. SHUKRE AND
S. M. MODAK, JJ.
DATE : JUNE 17, 2019.

ORAL JUDGMENT – [PER SUNIL B. SHUKRE, J.]

. Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. Respondent No.1 – Scrutiny Committee has not filed any reply and learned AGP for the State has requested for grant of further time so as to enable the Respondent No.1 – Scrutiny Committee to file its reply.

3. According to us, sufficient time has already been granted to the Respondent No.1 – Scrutiny Committee, and therefore, such request cannot be granted.

4. Sufficiency of time is a relative concept. What is sufficient time in one case may not be so in another case. In a case, where the student is pursuing his education and is required to appear for examinations of two semesters in an year, concept of sufficiency of time would be restricted to, may be one semester or two semesters, and not more than.

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5. In this case, the time which has been granted to the Respondent No.1 – Scrutiny Committee has exceeded the period of one semester and with the result, this Court is required to consider further request being made by the Petitioners for directing Respondent No.2 to allow them to continue with their education and also issue mark-sheets, and therefore, in such a case, it is always better that the main issue involved in the Petition is decided on merits as early as possible, or otherwise, it should not happen that the students who receive education or conferred with degrees, after some years are confronted with the orders of invalidation of their caste certificates and in that eventuality, lot of complications would arise. In order to avoid such a situation, this Court has now rejected the request made for grant of further time.

6. We have gone through the impugned order and also the documents placed on record. We find that there is a pre-constitutional document which is a birth certificate of one Kaurav Doma Mana, paternal grand-father of the Petitioners issued on 31st July 1938. There is no dispute about the relationship of the Petitioners with Kaurav Doma Mana and the dispute is regarding the contents of this document. According to the Respondent No.1 - Scrutiny Committee, this document does not show

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caste of the person named therein, and therefore, the Respondent No.1 - Scrutiny Committee has treated this document as having no probative value. We would disagree with the Respondent No.1 – Scrutiny Committee and also learned AGP for the State.

7. It is well known that as there were no reservations before 1950, and the documents created or entries taken in the Government record in those days did not specifically mention the social status of the persons named therein. Sometimes, this record referred to castes of the persons in a specific manner and sometimes, they did not do so and it was only a matter of individual practice. This fact has also been taken cognizance of by taking judicial notice by another Division Bench of this Court in the matter of ***Gajanan Pandurang Shende V/s Head-Master, Govt. Ashram School, Dongargaon Salod and others, reported in 2018(2) Mh.L.J.460***. So, just because there is no mention of caste before or after the word 'Mana' appearing in the document dated 31st July 1938, it could not be said that this word 'Mana' cannot be taken as caste of Kaurav Doma. Infact, no one would dispute that there is no surname as 'Mana' and this word is only synonyms with caste or a status now described as 'Tribe'. Therefore, we find that the Respondent No.1 –

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Scrutiny Committee has committed perversity in ignoring admissible and relevant evidence. We accept this document, a pre-constitutional document as showing the social status of the Petitioners as 'Mana' and as per the constitutional order, 1950, 'Mana' has been categorized as 'Scheduled Tribe'.

8. Now it is well settled law that the pre-constitutional documents have a probative value greater than the data collected in order to apply affinity test. If there is no doubt about the pre-constitutional documents, there would be no warrant for relying upon the affinity test. The affinity test would come in good stead as a corroborative piece of evidence and would not stand at a pedestal higher than the one on which the pre-constitutional documents stand, unless the documents are doubtful. Same view has been expressed by another Divisional Bench of this Court in the matter of ***Gajanan Pandurang Shende*** *(cited supra)* by relying upon a case of ***Anand V/s Committee for Scrutiny and Verification of Tribe Claims and others, reported in 2011(6) Mh.L.J. (S.C.) 919.***

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9. In view of above, we find that the impugned order is perverse and illegal and deserves to be quashed and set-aside by allowing this Petition. Writ Petition is allowed.

10. Impugned order is quashed and set-aside.

11. Respondent No.1 – Scrutiny Committee is directed to issue validity certificate to the Petitioners, as they belonging to 'Mana' Scheduled Tribe within a period of four weeks from the date of receipt of this order.

12. Needless to say, all educational benefits flowing from this order shall continue to be made available to the Petitioners.

13. Rule is made absolute. No order as to costs.

JUDGE **JUDGE**

Yadav VG

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